

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

STEVEN AVERY,

Plaintiff,

v.

Case No. 12-CV-192

**GERALD A. PAGEL, JOHN BYRNES,
GARY HEMAUER, CALUMET COUNTY,
and JOHN DOES,**

Defendants.

ORDER

Plaintiff, a prisoner proceeding pro se, filed a complaint in the above captioned action. Plaintiff has also filed a petition for leave to proceed in forma pauperis. Pursuant to the Prison Litigation Reform Act (PLRA), plaintiff is required to pay the full amount of the statutory filing fee, \$350.00, for this action. See 28 U.S.C. § 1915(b)(1).

Under the PLRA, which amended the in forma pauperis statute, the court must assess an initial partial filing fee of twenty percent of the average monthly deposits to plaintiff's account or average monthly balance in the plaintiff's prison account for the six-month period immediately preceding the filing of the complaint, whichever is greater. Id. After the initial fee is paid, the prisoner must make monthly payments of twenty percent of the preceding month's income until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). "The agency having custody of the prisoner shall forward payments from the prisoner's account to the Clerk of the Court each time the amount in the account exceeds \$10 until the filing fees are paid." Id.

Plaintiff filed a certified copy of his prisoner trust account statement for the six-month period immediately preceding the filing of the complaint as required under 28 U.S.C.

§ 1915(a)(2). A review of this information reveals that, for the six-month period immediately preceding the filing of the instant complaint, the average monthly deposit in plaintiff's prison account was \$161.12 and the average monthly balance to the account was \$79.37. Thus, in accordance with the provisions of 28 U.S.C. § 1915(b)(1), plaintiff is required to pay an initial partial filing fee of \$32.24. Plaintiff shall pay the initial partial filing fee of \$32.24 to the Clerk of Court on or before **April 24, 2012**. Failure to pay the initial partial filing fee within the specified time period will result in dismissal of the action pursuant to Civil Local Rule 41(c) (E.D. Wis.) and Fed. R. Civ. P. 41(b).

The PLRA also provides that if a prisoner files more than three actions or appeals which are dismissed as frivolous, malicious, or for failure to state a claim upon which relief can be granted, the prisoner will be prohibited from bringing any other actions in forma pauperis, unless the prisoner is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). In the event that his action is later dismissed for any of the above reasons, it will have an impact on the prisoner's ability to bring other actions in forma pauperis. This analysis of the complaint is not undertaken by the court until after the initial partial filing fee is paid. Accordingly, plaintiff will be afforded an opportunity to voluntarily dismiss this action to avoid incurring a "strike" under § 1915(g).

Notice to Plaintiff: If you do not wish to pay the filing fee as set forth in this Order or do not wish to proceed with this action to avoid incurring a "strike" under §1915(g), you must notify the court by filing a letter with the Clerk of Court on or before **April 24, 2012**, stating that you do not wish to prosecute this civil action. If you write such a letter, this case will be dismissed without prejudice. Voluntary dismissal will not be counted as a "strike" under §1915(g).

NOW, THEREFORE, IT IS HEREBY ORDERED that on or before **April 24, 2012**, plaintiff shall forward to the Clerk of Court the sum of \$32.24 as an initial partial filing fee in this action.

Upon payment of the initial partial filing fee, the court will determine whether the action can continue to proceed in forma pauperis. The court will review the complaint to determine that the action is not frivolous or malicious and that the complaint states a claim upon which relief can be granted. If the complaint does not meet this standard, the action will be dismissed.

IT IS ALSO ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined.

Dated at Milwaukee, Wisconsin, this 3rd day of April 2012.

s/

LYNN ADELMAN
District Judge